

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:22-CV-22671-ALTONAGA/TORRES

DELIO BATISTA,
MARIANA LOPEZ,
CARLOS LOPEZ, AND
RAFAELA VALIENTE,

Plaintiffs,

vs.

AVANT ASSURANCE INC.,
REINIER CORTES, AND
ANDREA GONZALEZ
QUINTERO,

Defendants.

/

**PLAINTIFFS' MOTION FOR RECONSIDERATION
OF SECOND EXTENSION OF TIME FOR DISCOVERY NUNC PRO TUNC
AND MOTION FOR CONTINUANCE OF TRIAL**

Plaintiffs, Delio Batista, Mariana Lopez, Carlos Lopez, and Rafaela Valiente, by and through their undersigned counsel, request until June 30, 2023 to conduct discovery, and separately request that trial be continued based on the following:

1. On February 8, 2023, this Honorable Court issued an Order extending the discovery deadline to May 8, 2023. [ECF No. 48].
2. The previous extension was given to accommodate the schedules of the parties to take depositions.
3. The first motion requesting an extension of time explained Defendant Reiner Cortes's deposition was scheduled for February 15, 2023, and Defendant Andrea Quintero's deposition would take place in March or April 2023. [ECF No. 47 at ¶¶ 4-6].

4. Mr. Cortes is the Chief Executive Officer of Avant Assurance, Inc. (“Avant”), and Mrs. Quintero is the Vice President of Avant.
5. Due to numerous scheduling conflicts, the depositions of Mr. Cortes and Ms. Gonzalez were finally coordinated on February 22, 2023, which was two weeks after this Court entered its Order extending the initial discovery deadline. *See Exhibit A, email thread coordinating depositions.*
6. Mr. Cortes’s deposition was reset for April 11, 2023, and Mrs. Quintero’s deposition was reset for April 12, 2023.
7. Plaintiffs deposed Mr. Cortes, as the corporate representative of Avant on April 11, 2023.
8. Plaintiffs attempted to depose Mrs. Quintero on April 12, 2023, but she refused to answer various questions because she was not “authorized” by Avant to do so. *See generally Plaintiff’s Motion for Discovery Hearing at ECF No. 56, which is incorporated by reference here.*
9. Specifically, it was defense counsel’s contention that Ms. Quintero could not answer questions related to Avant’s policies and procedures because Plaintiffs did not notice her as a corporate representative. [ECF No.56-2 at p.22].
10. Undersigned counsel suspended the deposition in order to obtain a ruling from the Court on the proper scope of inquiry of Mrs. Quintero’s deposition, and the depositions of other Avant employees to follow hers.
11. Plaintiffs could not conduct meaningful depositions of Avant’s employees if they decided which questions to answer based on a misunderstanding of Federal Rule of Procedure 30(b)(6).

12. Plaintiffs ordered Ms. Quintero's deposition transcript that same day, April 12, 2023, in order to attach the on-record discussion concerning the scope of deposition inquiry in a motion for discovery hearing.
13. The deposition transcript was received from the court reporting service on April 27, 2023.
14. Undersigned counsel was out of the office on April 27 and April 28, 2023.
15. Plaintiffs filed their motion for discovery hearing on May 4, 2023 [ECF No. 56], after asking Defendants to re-evaluate their position on the matter but receiving no response.
16. The discovery hearing was held on May 18, 2023.
17. After reading the transcript of Mrs. Quintero's deposition, Honorable Magistrate Judge Edwin G. Torres found that undersigned counsel was correct on the merits because parties cannot designate corporate representatives of their opposing parties.
18. However, Magistrate Judge Torres also concluded that undersigned counsel should have questioned Mrs. Quintero further since she was never instructed not to answer.
19. Ultimately, the magistrate judge ordered Mrs. Quintero's deposition to occur during the week of May 22, 2023.
20. Plaintiffs are still in need of depositions of two Avant employees, Alix Ledesma and Jennifer Manjarres, which were requested on April 12, 2023 before Mrs. Quintero's deposition, but Defendants never responded to the request.
21. Plaintiffs are in need of the remaining depositions in this case to properly prepare this case for trial.
22. As such, Plaintiffs request an extension of the discovery deadline to June 30, 2023 due to the scheduling conflicts in the parties' schedules.

23. Plaintiffs recognize that this request for an extension affects the other deadlines imposed in this Court's Orders at ECF Nos. 18 and 48.

24. Based on all of the above facts, Plaintiffs also move this Court to extend: (1) the June 12, 2023 deadline to file the joint pretrial stipulation, and all trial materials to July 14, 2023; and (2) the trial date, which is currently June 27, 2023 and has not been previously extended before, to August 28, 2023.¹

25. A proposed order granting this motion is attached as Exhibit A.

CERTIFICATE OF CONFERRAL

Pursuant to S.D. Fla. L.R. 7.1, I hereby certify that undersigned counsel's office spoke on the phone with counsel for Defendants, Daniel Tropp, on May 24, 2023 and asked whether they had an objection to Plaintiffs filing this Motion as "unopposed" or "joint". Mr. Tropp said that he would have to speak with co-counsel, Santiago Cueto, before responding. Undersigned counsel also emailed a draft of this Motion to Mr. Tropp, Mr. Cueto, and their legal assistant, Soledad Medina, on May 24, 2023, and asked if they had any objections or edits, but no response was received to the email. On May 25, 2023, undersigned counsel called Mr. Tropp again to ask what their position on this Motion was, and Mr. Tropp reiterated that he had to speak to Mr. Cueto about it. Undersigned counsel has not received a phone call or email from counsel for Defendants regarding the relief requested in this Motion as of the time of this filing.

/s/ Toussaint Cummings, Esq.
Toussaint Cummings, Esq. (119877)

Respectfully submitted on May 25, 2023.

¹ Undersigned counsel is set for trial for the 3-week period starting July 31, 2023 in Miami-Dade Circuit Civil Case No. 2019-030098-CA-01.

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